

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Section 68.4(a) of the Commission's Rules)	
Governing Hearing Aid Compatible)	
Telephones)	WT Docket No. 01-309
)	
Petition for Waiver of Section 20.19(d)(2) of the)	
Rules)	
)	

PETITION FOR TEMPORARY WAIVER

Airadigm Communications, Inc. ("Airadigm"), by its attorneys and pursuant to Section 1.3 and 1.925 of the Commission's rules, hereby requests a temporary waiver of the requirements contained in Section 20.19(d)(2) of the Commission's rules that Airadigm include in its handset offerings at least two (2) handset models per air interface that comply with Section 20.19(b)(2) of the Commission's rules, and make available in each retail store owned or operated by it all of the handset models for consumers to test in the store. Because handsets with a U3T rating that would operate on Airadigm's network are not available at this time to Airadigm, it respectfully requests an extension of the September 18, 2006 deadline until such time these handsets are available from the manufacturers. As explained below, Airadigm expects to offer at least two handset models with a U3T rating by no later than November 1, 2006.

Background

Airadigm is a small, rural wireless provider operating a GSM system in parts of Wisconsin. Airadigm sells a variety of handsets which it obtains from several vendors, particularly Motorola. At this time, none of the handsets it sells have a U3T rating in accordance

with Section 20.19(b)(2) of the Commission's rules. However, Airadigm will be offering the following handsets, which will have a U3T rating: Motorola V3i and Motorola V197. It expects to be selling these handsets by November 1, 2006.

Rule Section 20.19(d)(2) Requirements

Section 20.19(d)(2) of the Commission's Rules specifies that "each provider of public mobile radio service must...[i]nclude in its handset offerings at least two handset models per air interface that comply with Section 20.19(b)(2) by September 18, 2006, and make available in each retail store owned or operated by the provider all of these handset models for consumers to test in the store..." Rule Section 20.19(b)(2) specifies that a "wireless phone used for public mobile radio services is hearing aid compatible...if it meets, at a minimum" a UT3 rating for radio frequency interference under ANSI Standard C63.19. Thus, the rule requirement is generally applicable to all Tier III CMRS carriers. It requires Airadigm to offer, and to make available for in-store testing by consumers, for each of its digital air interface at least two handsets with a U3T rating by the September 18, 2006 implementation deadline.

Discussion

The Commission has indicated generally that waiver requests of the Hearing Aid Compatible ("HAC") digital wireless handset requirements will be evaluated under the general waiver standard set forth in Sections 1.3 and 1.925 of the Rules and the standards set forth in WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) and Northeast Cellular Telephone Company v. FCC, 897 F.2d 1164 (D.C. Cir. 1990). Hearing Aid Compatible Telephones (WT Docket No. 01-

309 – Order on Reconsideration and Further Notice of Proposed Rulemaking), FCC 05-122, released June 21, 2005 at Para. No. 50 (“Order on Reconsideration”).

Section 1.3 of the Rules states, in relevant part, that “[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.” Section 1.925(b)(3) of the Rules states that the “Commission may grant a waiver request if it is shown that: (i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rules(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.” Under WAIT Radio and Northeast Cellular Telephone Company, a rule waiver “may be granted in instances where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question.” Order on Reconsideration, Para. 50 n. 158.

As a small, wireless carrier, Airadigm is dependant on the availability of compliant handsets from its vendors. Given the limited supply of such handsets, Airadigm is unable to timely offer handsets with a U3T rating at this time. As the Commission has recognized, wireless carriers are largely dependant on the availability of equipment from manufacturers with respect to equipment-related deadlines.¹ Further, handset manufacturers have only recently been

¹ See *In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, T-Mobile USA, Inc. Petition for Waiver of Section 20.19(c)(3) of the Commission's Rules, Memorandum Opinion and Order*, 20 FCC Rcd 15147, para 7 (2005); see also


able to obtain the necessary certifications to comply with the T-coil requirement and several handset models still have not been certified by the Commission at this time. Therefore, the circumstances associated with Airadigm's efforts to meet the requirements set forth in Section 20.19(d)(2) are beyond its control. In view of the unique and unusual circumstances described herein, Airadigm has no reasonable alternative but to request a temporary waiver of Section 20.19(d)(2) of the Commission's rules.

Conclusion

For the reasons stated above, Airadigm seeks a temporary waiver of Section 20.19(d)(2) until such time handsets with a U3T rating are available from its vendors. Airadigm is committed to offering at least two handsets with a U3T rating. Thus, grant of the instant waiver request is consistent with the public interest, convenience and necessity.

Respectfully Submitted,

AIRADIGM COMMUNICATIONS, INC.


By: Thomas Gutierrez, Esq.
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Lukas, Nace, Gutierrez & Sachs Chartered
It's Attorney

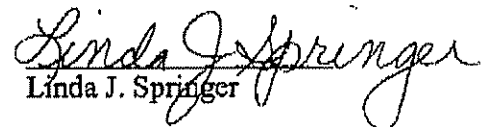
September 19, 2006

Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers, Order to Stay, 17 FCC Rcd 14,841, paras 11-13, 17 (2002).

DECLARATION

I, Linda J. Springer, hereby declare as follows:.

1. I am the Director of Finance and Accounting of Airadigm Communications, Inc.
2. I am familiar with the facts contained in the foregoing "Petition of Temporary Waiver", and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.


Linda J. Springer

September 19, 2006